

**UNITED STATES BANKRUPTCY COURT
IN THE DISTRICT OF OREGON**

BANKRUPTCY COURT
DISTRICT OF UTAH

CASE NO.: 09-31131-rld7

**5 TYRONE BLOCKER,
Plaintiff,**

ADV. PROC. No.: 09-03361-rld

6

FIRST AMENDED COMPLAINT

7 **NOMURA HOME EQUITY HOME**
8 **LOAN INC., ET AL.,**
Defendant(s).

TRIAL BY JURY DEMAND

9

I. JURISDICTION

1. This Court has jurisdiction to entertain this action pursuant to Fed. Rule Bankr. 7001,L.B.R. 7001-1 and supplemental jurisdiction pursuant to 28 U.S.C § 1337(c).

II. PLAINTIFF/DEBTOR

2. Plaintiff, Tyrone Blocker, was at all times mentioned herein the debtor in bankruptcy proceeding, case no. 09-31131-rld7, and brings this adversary proceeding to redress defendant's violation of plaintiff's statutory rights under 18 U.S.C. § 1962(a) to 1962(d), and tort under Oregon law.

III. DEFENDANT(S)/CREDITOR(S)

3. Defendant, Nomura Home Equity Home Loan Inc., was at all times mentioned herein an incorporated company which makes loans and engaged in interstate commerce.

4. Defendant, HSBC Bank USA, National Association, was at all times mentioned herein an incorporated bank engaged in interstate commerce.

5. Defendant, Ocwen Loan Servicing was at all times mentioned herein a loan servicing limited liability corporation engaged in interstate commerce.

6. Defendant, Kelly D. Sutherland, was at all times mentioned herein trustee and attorney for Nomura Home Equity Home Loan Inc., HSBC Bank USA, Ocwen Loan Servicing, and partner in the limited liability corporation Shapiro & Sutherland LLC and engaged in interstate commerce.

7. Defendant, Shapiro & Sutherland LLC was at all times mentioned herein a limited liability company engaged in interstate commerce.

IV. CLAIM ONE R.I.C.O. UNDER 18 U.S.C. § 1962(A)-(D)

FACTS

8. On July 28, 2006, Michael D. Feil and Heather A Feil, borrowers, were loaned \$237,500.00, on a promissory note payable to lender, American Mortgage Express Financial DBA, to purchase a home. Mortgage Electronic Registration System, Inc.,(hereinafter MERS) was designated grantee, solely as nominee for lender, American Mortgage Express Financial DBA, and beneficiary under the trust deed (hereinafter DEED).

9. On December 4, 2007, borrowers, Michael D. Feil and Heather A. Feil, transferred title of DEED to Plaintiff.

10. On March 21, 2008, MERS, acting solely as nominee/beneficiary for American Mortgage Express Financial DBA, purportedly assigned/transferred the DEED over to Defendant, Nomura Home Equity Home Loan, Inc., who designated Defendant, HSBC Bank USA, National Association, as trustee. A substitution of trustee under the DEED was allegedly made designating Defendant, Kelly D. Sutherland, a partner of Defendant, Shapiro & Sutherland

1 L.L.C., as trustee.

2 11. The promissory note (hereinafter NOTE) that was signed over to American
3 Mortgage Express Financial DBA, by Michael D. Feil and Heather A. Feil, for
4 a loan to purchase a home was not assigned/transferred from MERS or
5 American Mortgage Express Financial DBA, under ORS 73.0201 to ORS
6 73.0304, over to Defendants, Nomura Home Equity Home Loan, Inc; HSBC
7 Bank USA, National Association; or Ocwen Loan Servicing; Kelly D.
8 Sutherland; or Shapiro & Sutherland L.L.C., giving any of the Defendants,
9 Nomura Home Equity Home Loan, Inc., HSBC Bank USA; Ocwen Loan
10 Servicing; Kelly D. Sutherland or Shapiro & Sutherland L.L.C., who are
11 falsely claiming to be holders and owners of the note, or to be acting in behalf
12 of the NOTE holder and owner, to enforce the DEED or NOTE under ORS
13 73.0201 to ORS 73.0304, in any court of law within the jurisdiction of the
14 United States or that allowed any of the defendants to foreclose on the DEED
15 or quit claim deed of plaintiff.

16 12. On October 31, 2008, substitute trustee for Defendant, Nomura Home Equity
17 Home Loan, Inc, defendant, Kelly D. Sutherland and defendant, Shapiro &
18 Sutherland L.L.C., in a scheme devised to defraud and obtain plaintiff's home,
19 with associates in fact Nomura Home Equity Home Loan Inc., HSBC Bank
20 USA and Ocwen Loan Servicing, in a pattern of racketeering activity by
21 means of false, fraudulent means had sent a Trustee's Notice of Sale, which
22 was sent and transmitted by postal service through interstate commerce, in
23 violation of 18 U.S.C. § 1341, from defendants, Kelly D. Sutherland and
24 Shapiro & Sutherland L.L.C. office in Vancouver, Washington, to the

1 Multnomah County Records Office, for the intended purpose and attempts to
2 foreclose upon plaintiff home in a pattern of racketeering activity, and scheme
3 devised with defendants, Nomura Home Equity Home Loan, Inc, HSBC Bank
4 USA and Ocwen Loan Servicing, associates in fact, who provided support for
5 the illegal and fraudulent scheme to defraud plaintiff of his home, through
6 their activities to mask, conceal and condone, directly and indirectly, the
7 fraudulent scheme by defendants, Kelly D. Sutherland, Nomura Home Equity
8 Home Loan, Inc., HSBC Bank USA, and Ocwen loan Servicing, falsely
9 representing to the holder and owner of the NOTE, and/or to be acting in
10 behalf of the holder and owner of the NOTE required under ORS 73.0201 to
11 ORS 73.0304, when none of the defendants, Kelly D. Sutherland, Shapiro &
12 Sutherland L.L.C. Nomura Home Equity Home Loan, Inc., HSBC Bank USA,
13 and Ocwen Loan Servicing, were holders and owners of the NOTE, or acting
14 in behalf of the Note holder and owner, as required under ORS 73.0201 to
15 ORS 73.0304, to enforce foreclosure.

16 13. Defendants, Kelly D. Sutherland, Nomura Home Equity Home Loan Inc,
17 HSBC Bank USA,. Ocwen Loan Servicing, and Shapiro & Sutherland L.L.C,

18 knew or should have known that the activities complained of would use the
19 mail or wires in furtherance of the activities and schemes.

20 14. Defendants, Nomura Home Equity Home Loan, Inc; HSBC Bank USA,

21 National Association; Kelly D. Sutherland, Shapiro & Sutherland L.L.C,
22 Ocwen Loan Servicing are all enterprises engaged in interstate commerce,
23 including during, and at all time defendants schemed and devised with intent
24 and attempts to defraud plaintiff of plaintiff's home (property).

1 15. On February 25, 2009, plaintiff filed chapter 7 bankruptcy in the United States
2 bankruptcy court, case no. 09-31131-tmb7.

3 16. Upon plaintiff filing chapter 7 bankruptcy all debts owed by plaintiff was
4 placed under automatic stay pursuant to 11 U.S.C. section 362(a) from being
5 collected unless the creditor(s) had pecuniary interest as economical
6 beneficiaries, real party in interest standing before the court by being holders
7 and owners of the NOTE, or acting in behalf of the holder and owner of the
8 NOTE, to bring the Motion for Relief From Stay under ORS 73.0201 to ORS
9 73.0304, to foreclose on the debt owed under the NOTE.

10 17. Defendants, Kelly D. Sutherland, received income derived, directly and
11 indirectly from the pattern of racketeering activities set forth in paragraphs 10
12 to 14 and paragraphs 18 to 21 from defendant Nomura Home Equity Home
13 Loan Inc, HSBC Bank USA, Ocwen Loan Servicing, as attorney for each, and
14 as trustee for defendant Nomura Home Equity Home Loan, Inc, HSBC Bank
15 USA and Ocwen Loan Servicing into Shapiro & Sutherland L.L.C., and
16 defendant, Kelly D. Sutherland, has directly and indirectly maintained a
17 interest and control in the enterprise, Shapiro & Sutherland LLC, through the
18 pattern of racketeering activities described in paragraphs 10 to 14 to
19 paragraphs 18 to 21 and has directly and indirectly participated in Nomura
20 Home Equity Home Loan, Inc., HSBC Bank USA, and Ocwen Loan Servicing
21 by acting as a trustee for Nomura Home Equity Home Loan, Inc., and attorney
22 for Nomura Home Equity Home Loan, Inc., HSBC Bank USA, and Ocwen
23 Loan Servicing, while engaged in the fraudulent scheme, with intent and
24 attempts to defraud plaintiff of his home through a pattern of racketeering

1 activities described in paragraphs 10 to 14 and paragraphs 18 to 21.

2 18. Defendants, Kelly D. Sutherland, is employed by and maintained a business
3 partnership interest in Defendant, Shapiro & Sutherland, by having entering
4 into and engaging in a scheme devised with defendants Nomura Home Equity
5 Home Loan, Inc., HSBC Bank USA and Ocwen Loan Servicing, who
6 provided support for the illegal and fraudulent scheme to defraud plaintiff of
7 his home through their actions to mask, conceal, and condone, directly and
8 indirectly, the illegal and fraudulent scheme, through a pattern of racketeering
9 activities with intent, and in attempts, to defraud plaintiff of his home by
10 means of false and fraudulent pretenses and representations by preparing and
11 having transmitted by means of electronic wire or had transmitted by Postal
12 Service (mail), through interstate commerce, in violation of 18 U.S.C. section
13 1341 and/or 1343, from Vancouver, Washington, to the United States
14 bankruptcy court of Oregon on April 7, 2009, a Notice of Motion For Relief
15 from Stay and Motion For Relief From Stay, and filing fees for the notice and
16 motion for relief from stay; and transmitted by means of Postal Service (mail)
17 through interstate commerce, in violation of 18 U.S.C. § 1341, a copy of the
18 Notice of Motion For Relief from Stay and Motion For Relief From Stay to
19 plaintiff on April 9, 2009, and fraudulently falsely represented to have
20 pecuniary, real party in interest under 11 U.S.C. § 362(h) as holder and owners
21 of the NOTE, or to be acting in behalf of the holder and owner of the NOTE,
22 giving all defendants, Kelly D. Sutherland, Nomura Home Equity Home Loan,
23 Inc, HSBC Bank USA and Ocwen Loan Servicing prudential standing, as real
24 parties in interest, to apply for the relief from stay with the United States

1 bankruptcy court of Oregon.

2 19. Defendants, Kelly D. Sutherland, Shapiro & Sutherland LLC, Nomura Home
3 Equity Home Loan, Inc.; HSBC Bank USA and Ocwen Loan Servicing sought
4 to have the stay removed by false and fraudulent misrepresentation with intent,
5 and attempted purpose of obtaining plaintiff's home by means of a fraudulent
6 foreclosure scheme, inasmuch as, none of the defendants, Nomura Home
7 Equity Home Loan, Inc., HSBC Bank USA, Ocwen Loan Servicing, Kelly D.
8 Sutherland or Shapiro & Sutherland L.L.C. were holders and owners of the
9 NOTE, or were acting in behalf of the Note holder and owner, or had real
10 party interest under 11U.S.C. § 362(h) to enforce the NOTE or to seek relief
11 from stay in the bankruptcy court or to seek foreclosure proceeding against
12 plaintiff under state law pursuant ORS 73.0201 to ORS 73.0304.

13 20. Defendants, HSBC Bank USA, Nomura HOME Equity Home Loan, Inc., and
14 Ocwen Loan Servicing, has provided support for the illegal and fraudulent
15 scheme to defraud plaintiff of his home, though their actions to mask, conceal
16 and condone, directly and indirectly, the illegal and fraudulent scheme by
17 coming before the United States bankruptcy court of Oregon on motion for
18 relief from stay and falsely and fraudulently misrepresented defendants were
19 real parties in interest under 11 U.S.C. § 362(h), having pecuniary interest to
20 enforce the NOTE, when in fact none of the defendants, Nomura Home Equity
21 Home Loan, Inc., HSBC Bank USA or Ocwen Loan Servicing, were holders
22 and owners of the NOTE, and defendants knew none of them were owners of
23 the NOTE, or were acting in behalf of the holder and owner of the NOTE, or
24 had real party in interest under 11 U.S.C. § 362(h), in a fraudulent scheme

1 with defendant, Kelly D. Sutherland, and Shapiro & Sutherland, LLC, who
2 prepared the motion for relief from stay and had transmitted by electronic wire
3 or Postal Service, through interstate commerce, in violation of 18 U.S.C. §
4 1341 and/or 1343, from Vancouver, Washington to the United States
5 bankruptcy court of Oregon; and defendants knew none of them, including
6 defendant, Kelly D. Sutherland, had prudential standing, real party in interest
7 under 11 U.S.C. § 362(h), to enforce the NOTE which allowed the defendants
8 to bring the motion for relief from stay, and defendants brought it falsely and
9 fraudulently with the intent, and attempts, to remove the stay to fraudulently
10 foreclosed upon plaintiff's home.

11 21. Defendant, Kelly D. Sutherland, Shapiro & Sutherland LLC, in fraudulent
12 scheme with defendants, Nomura Home Equity Home Loan, Inc., HSBC Bank
13 USA and Ocwen Loan Servicing, associates in fact, did with intent, and
14 attempts, to fraudulently obtain plaintiff's home, by false and fraudulent
15 pretenses and misrepresentation, had a hearing on May 19, 2009, by means of
16 transmitted electronic wire through interstate commerce, in violation of 18
17 U.S.C. §1343, on the motion for relief from stay, to fraudulently remove the
18 stay with intent, and attempts, to foreclose on plaintiff's home, and was
19 granted relief from stay by Judge, Trish M. Brown, on or about May 19 2009;
20 although defendants, Kelly D. Sutherland, Shapiro & Sutherland LLC,
21 Nomura Home Equity Home Loan, Inc, HSBC Bank USA and Ocwen Loan
22 Servicing had no pecuniary interest or prudential standing, as real party in
23 interest under 11 U.S.C. § 362(h), to obtain the relief from stay under ORS
24 73.0201 to ORS 73.0304 or Article III of the United States Constitution.

1 22. Defendant, Kelly D. Sutherland knowingly conspired with defendants,
2 Nomura Home Equity Home Loan Inc., HSBC Bank USA and Ocwen Loan
3 Servicing, associates in fact, who all provided support for the illegal and
4 fraudulent scheme to defraud plaintiff of his home through their actions to
5 condone, mask and conceal, directly and indirectly, the illegal and fraudulent
6 scheme, through a pattern of racketeering activity, described in paragraphs 10
7 to 14 and paragraphs 17 to 21, by false and fraudulent pretenses and
8 misrepresentations, petitioned the United States bankruptcy court of Oregon to
9 remove the stay under 11 U.S.C. § 362(h) and foreclose upon plaintiff home in
10 violation of 18 U.S.C. § 1962(d).

11 23. On May 19, 2009, Judge Trish Brown, granted the Motion For Relief From
12 Stay when there was no evidence, the motion was not presented as required by
13 4001() of the local rules to give Judge Trish Brown, Article III Constitutional
14 standing to grant the Motion For Relief From Stay

15 24. Plaintiff as injured by Defendants, Kelly D. Sutherland, Shapiro & Sutherland
16 LLC., HSBC Bank USA, Nomura Home Equity Home Loan, Ocwen Loan
17 Servicing fraudulent scheme devised to obtain plaintiff's home when plaintiff
18 had leased the home January 1, 2008, for a eighteen (18) month period and
19 upon the lessee learning that foreclosure was impeding April 14, 2008,
20 causing the lessee to withdraw from the lease July 1, 2008, thereby causing
21 plaintiff having to reimburse the lessee the remaining twelve (12) months on
22 the lease in the amount of \$12,600.

23 25. Pursuant to 18 U.S.C. section 1964(c) plaintiff is entitled to recover treble
24 damages for such actual damages in the amount of \$37,800.00 against

1 defendants, and each of them.

2 IV. VIOLATION OF AUTOMATIC STAY 11 U.S.C. § 362(h)

3 FACTS

4 26. On July 28, 2006, Michael D. Feil and Heather A. Feil, were loaned
5 \$237,500.00, on a promissory note payable to American Mortgage Express
6 Financial DBA, to purchase a home. Mortgage Electronic Registration
7 System, Inc. (hereinafter MERS) was designated grantee, solely as nominee
8 for lender, American Mortgage Express Financial DBA, and beneficiary under
9 the trust deed (hereinafter DEED).

10 27. On December 4, 2007, borrowers, Michael D Feil and Heather A. Feil,
11 transferred title of the DEED to plaintiff.

12 28. On March 21, 2008, MERS, acting solely as nominee/beneficiary for
13 American Mortgage Express Financial DBA purportedly assigned/transferred
14 the DEED over to Defendant, Nomura Home Equity Home Loan, Inc, who
15 designated Defendant, HSBC Bank USA, National Association, as trustee. A
16 substitution of trustee under the DEED was allegedly made designating
17 Defendant Kelly D. Sutherland, a partner of Defendant, Shapiro & Sutherland
18 L.L.C., as trustee.

19 29. The promissory note (hereinafter NOTE) that was signed over to American
20 Mortgage Express Financial DBA, by Michael D. Feil and Heather A. Feil, for
21 a loan to purchase a home was not assigned/transferred from MERS or
22 American Mortgage Express Financial DBA, under ORS 73.0201, to ORS
23 73.0304, over to Defendants, Nomura Home Equity Home Loan, Inc., HSBC
24 Bank USA, National Association, or Ocwen Loan Servicing, Kelly D.

1 Sutherland or Shapiro & Sutherland L.L.C., giving any of the Defendants
2 Nomura Home Equity Home Loan, Inc., HSBC Bank USA, Ocwen Loan
3 Servicing, Kelly D. Sutherland or Shapiro & Sutherland L.L.C., a pecuniary
4 interest, as economical beneficiaries, or real party in interest standing, as
5 holder of the NOTE, to enforce the DEED or NOTE under ORS 73.0201, to
6 ORS 73.0304, in any court of law within the jurisdiction of the United States
7 or that allowed any of the defendants to foreclose on the DEED or quit claim
8 deed of plaintiff.

9 30. On February 25, 2009, plaintiff filed chapter 7 bankruptcy in the United States
10 bankruptcy court, case no. 09-31131-tmb7.

11 31. Upon plaintiff filing chapter 7 bankruptcy all debts owed by plaintiff was
12 placed under automatic stay pursuant to 11 U.S.C. §362(a) from being
13 collected unless the creditor(s) had pecuniary interest as economical
14 beneficiaries, real part in interest standing before the court by being holders
15 and owners of the NOTE, or acting in behalf of the holder and owner of the
16 NOTE, to bring the Motion For Relief From Stay under ORS 73.0201, to ORS
17 73.0304, and Article III of the United States Constitution to foreclose on the
18 debt owed under the NOTE.

19 32. Defendant, Kelly D. Sutherland, is employed by and maintained a business
20 partnership interest in Shapiro & Sutherland L.L.C., and did enter into and
21 engage in a scheme devised with defendants, Nomura Home Equity Home
22 Loan, Inc, HSBC Bank USA and Ocwen Loan Servicing, with intent, and in
23 attempts, to obtain plaintiff home did by means of false and fraudulent
24 pretenses represent by preparing and having transmitted by means of

1 electronic wire or had transmitted by postal service (mail), through interstate
2 commerce, from Vancouver, Washington, to the United States Bankruptcy
3 Court of Oregon on April 7, 2009,a Notice of Motion For Relief From Stay
4 and Motion For Relief From Stay, and filing fees for the notice and motion for
5 relief from stay, and transmitted by means of postal service (mail), through
6 interstate commerce, a copy of the Notice of Motion For Relief From Stay and
7 Motion For Relief From Stay to plaintiff on April 9, 2009, and fraudulently
8 and falsely represented to have pecuniary interest, real party in interest under
9 11 U.S.C.§ 362(h), as holders and owners of the NOTE, or to be acting in
10 behalf of the holder and owner of the NOTE, giving all defendants, Kelly D.
11 Sutherland, Nomura Home Equity Home Loan, Inc, HSBC Bank USA and
12 Ocwen Loan Servicing, prudential standing, real [party in interest, to apply for
13 the relief from stay with the United States Bankruptcy Court of Oregon.

14 33. Defendant's, Kelly D. Sutherland, Nomura Home Equity Home Loan, Inc,
15 HSBC Bank USA and Ocwen Loan Servicing sought to have the stay removed
16 by false and fraudulent misrepresentations with intent, and attempted purpose
17 of obtaining plaintiff's home by means of fraudulent foreclosure scheme,
18 inasmuch as, none of the defendant's, Nomura Home Equity Home Loan, Inc,
19 HSBC Bank USA Ocwen Loan Servicing Kelly D. Sutherland, Shapiro &
20 Sutherland LLC were holders and owners of the NOTE, or had real party in
21 interest, pecuniary interest, prudential standing under 11 U.S.C § 362(h) to
22 enforce the NOTE or authorized to seek relief from stay in the bankruptcy
23 court, or to seek foreclosure proceeding against plaintiff under ORS 73.0201
24 to ORS 73.0304 or Article III of the United States Constitution.

1
2 34. Defendants, HSBC Bank USA, who was trustee for defendant, Nomura Home
3 Equity Home Loan, Inc., and Ocwen Loan Servicing, came before the United
4 State misrepresented that they were real party in interest under 11 U.S.C. sec
5 362(h), having pecuniary interest in behalf of defendant, Nomura Home
6 Equity Home Loan, Inc., to enforce the Note, when in fact none of the
7 defendants, Nomura Home Equity Home Loan, Inc. HSBC Bank USA or
8 Ocwen Loan Servicing, were holders and owners of the Note, and defendants
9 knew none of them were owners of the Note, or were acting in behalf of the
10 holder and owner of the Note, or had real party in interest under 11 USC Sec
11 362 (h), in a conspiratorial scheme with defendant, Kelly D. Sutherland and
12 Shapiro & Sutherland LLC, who prepared the motion for relief from stay and
13 had it transmitted by electronic wire or postal service (mail), through interstate
14 commerce, from Vancouver, Washington to the United States bankruptcy
15 court of Oregon, and defendants knew none of them, including defendant,
16 Kelly D. Sutherland, had prudential standing, real party in interest under 11
17 U.S.C. Sec 362(h) to enforce the Note, which allowed defendants to bring the
18 motion for relief from stay, and defendants brought it falsely and fraudulently
19 with the intent, and attempts, to remove the stay fraudulently to foreclose upon
20 plaintiff's home.

21 35. Defendant, HSBC Bank USA, who is trustee for defendant, Nomura Home
22 Equity Home Loan, Inc., and Ocwen Loan Servicing, who are agents of
23 Nomura Home Equity Home Loan, Inc., came before the United States
24 Bankruptcy Court of Oregon on motion for relief from stay and fraudulently,

1 and falsely misrepresented that they were real party in interest under 11 U.S.C.
2 Sec 362(h), having pecuniary interest without joining their principal to the
3 motion, Nomura Home Equity Home Loan, Inc.

4 36. In furtherance of the conspiratorial scheme to fraudulently obtain plaintiff's
5 home defendant, Kelly D. Sutherland, in conspiratorial scheme with
6 defendant, Nomura Home Equity Home Loan, Inc., HSBC Bank USA and
7 Ocwen Loan Servicing, did with intent to fraudulently obtain plaintiff's home,
8 by false and fraudulent pretenses and misrepresentation, have a hearing on
9 May 19, 2009, by means of transmitted electronic wire, through interstate
10 commerce, on the motion for relief from stay, to fraudulently remove the stay
11 with intent, and attempts, to foreclose on plaintiff's home, before Judge Trish
12 Brown, although defendants, Kelly D. Sutherland, Nomura Home Equity
13 Home Loan, Inc. HSBC Bank USA and Ocwen Loan Servicing had no
14 pecuniary interest or prudential standing as real party in interest under 11
15 U.S.C. Sec 362(h) to obtain the relief from stay under ORS 73.0201 to ORS
16 73.0304.

17 37. As a result of defendants, Kelly D. Sutherland, Nomura Home Equity Home
18 Loan, Inc. HSBC Bank USA and Ocwen Loan Servicing fraudulent devised
19 scheme and false misrepresentation described in paragraphs 26 to 36, Judge
20 Trish Brown, erroneously granted defendants motion for relief from stay,
21 which was entered May 27, 2009, when there was no evidence, the Note,
22 presented as required by ORS 73.0201 to ORS 73,0304, and Article III of the
23 United States Constitution by defendants, Kelly D. Sutherland, Nomura Home
24 Equity Home Loan, Inc., HSBC Bank USA, or Ocwen Loan Servicing, giving

1 any of the defendants real party in interest under 11 U.S.C. Sec 362(h).

2 38. Defendants, Kelly D.Sutherland, Nomura Home Equity Home Loan, Inc.,
3 HSBC Bank USA, and Ocwen Loan Servicing all knew they were not the
4 owners and all defendants knew they were not acting in behalf of the holders
5 and owners of the Note before filing the motion for relief from stay, giving
6 any of the defendants, Kelly D. Sutherland, Nomura Home Equity Home
7 Loan, Inc., HSBC Bank USA, or Ocwen Loan Servicing, prudential standing,
8 as economical beneficiaries, real party in interest under 11 U.S.C. Sec 362(h),
9 to bring the motion for relief from stay and enforce the Note, to have the
10 automatic stay removed or granted by Judge Trish Brown, in violation of 11
11 U.S.C Sec 362(h), and defendants, Kelly D. Sutherland, Nomura Home Equity
12 Home Loan, Inc., HSBC Bank USA, and Ocwen Loan Servicing, all knew
13 their conduct and actions in seeking relief from stay were willfully,
14 knowingly, and maliciously being done to violate 11 U.S.C. Sec 362(h).

15 **SUPPLEMENTAL STATE TORT CLAIM 28 U.S.C. SECTION 1376(c)**

16 39. On July 29, 2006, Michael D. Feil, and Heather A. Feil, borrowers, were
17 loaned 237,500.00, on promissory Note payable to lender, American Mortgage
18 Express Financial DBA, to purchase a home. Mortgage Electronic
19 Registration System, Inc., (hereinafter MERS) was designated grantee, solely
20 as nominee for lender, American Mortgage Express Financial DBA, and
21 beneficiary under the trust deed (hereinafter DEED).

22 40. On December 4, 2007, borrowers, Michael D. Feil, and Heather A. Feil,
23 transferred title of the DEED to plaintiff.

24 41. On March 21, 2008, MERS, acting solely as nominee/beneficiary for

1 American Mortgage Financial DBA, purportedly assigned/transferred the
2 DEED over to defendants, Nomura Home Equity Home Loan, Inc., who
3 designated defendant, HSBC Bank USA, National Association, as trustee. A
4 substitution of trustee under the DEED was allegedly made designating
5 defendant, Kelly D. Sutherland, a partner of defendant, Shapiro & Sutherland
6 LLC., as trustee.

7 42. The promissory note (hereinafter Note) that was signed over to American
8 Mortgage Express Financial DBA, by Michael D. Feil and Heather A. Feil, for
9 a loan to purchase a home was not assigned/transferred from MERS or
10 American Mortgage Express Financial DBA, under ORS 73.0201 to ORS
11 73.0304, over to defendants, Nomura Home Equity Home Loan, Inc; HSBC
12 Bank USA, National Association; or Ocwen Loan Servicing; Kelly D.
13 Sutherland; or Shapiro & Sutherland L.L.C., giving any of the defendants,
14 Nomura Home Equity Home Loan, Inc., HSBC Bank USA; Ocwen Loan
15 Servicing; Kelly D. Sutherland or Shapiro & Sutherland L.L.C., who are
16 falsely claiming to own Note, or to be acting in behalf of the holder and owner
17 of the Note, a pecuniary interest, as economical beneficiaries, or real party in
18 interest standing, as holders and owners of the Note, or to be acting in behalf
19 of the Note holder, and owner to enforce the Note under ORS 73.0201 to ORS
20 73.0304, in any court of law within the jurisdiction of the United States that
21 allowed any of the defendants to foreclose on the DEED or quit claim deed of
22 plaintiff.

23 43. Defendant, Kelly D. Sutherland, on October 31, 2008, in conspiratorial
24 concert with defendants, Nomura Home Equity Home Loan, Inc., HSBC Bank

1 USA, and Ocwen Loan Servicing, did with intent to defraud plaintiff of
2 plaintiff's home, and unlawfully foreclose upon plaintiff home, did by false
3 material and knowing representation to plaintiff, through the filing of
4 Trustee's Notice Of Sale with the Multnomah County Recorders Office, and
5 sending a copy to plaintiff, purport that defendants, Kelly D. Sutherland,
6 Nomura Home Equity Home Loan, Inc., and HSBC Bank USA, were
7 economical pecuniary beneficiaries and holder and owner of the promisorry
8 Note, or acting in behalf of the holder and owner of the Note, of the property
9 deeded over to plaintiff by Michael and Heather Feil, which lawfully enabled
10 defendants, Kelly D. Sutherland, Nomura Home Equity Home Loan, Inc., and
11 HSBC Bank USA, to foreclose on the deed securing the obligation of the Note
12 under ORS 73.0201 to ORS 73.0304.

13 44. Defendant Kelly D. Sutherland, Nomura Home Equity Home Loan, Inc.,
14 HSBC Bank USA, and Ocwen Loan Servicing intended for plaintiff to rely
15 and act upon the false material representation of them purporting they were
16 economical pecuniary beneficiaries and holder and owners of the Note, or
17 were acting in behalf of the holder and owner of the Note, enabling defendants
18 to foreclose on the property deeded over to plaintiff.

19 45. Plaintiff in ignorance of defendants, Kelly D. Sutherland, Nomura Home
20 Equity Home Loan, Inc., HSBC Bank USA, and Ocwen Loan Servicing,
21 material false representations relied upon defendants material false
22 representation that defendants, Kelly D. Sutherland, Nomura Home Equity
23 Home Loan, Inc., HSBC Bank USA, and Ocwen Loan Servicing, were
24 economical pecuniary beneficiaries and holders and owners of the Note

secured by the DEED, or were acting in behalf of the holder and owner of the Note, which lawfully enabled defendants, Kelly D. Sutherland, Nomura Home Equity Home Loan, Inc., HSBC Bank USA, and Ocwen Loan Servicing, to seek foreclosure of plaintiff's home, and plaintiff reliance was a result of plaintiff's belief that defendants were reputable businesses licensed by the State of Oregon to conduct business which further cause plaintiff to believe that defendants representation were true.

46. Defendants misrepresentation to plaintiff were made with malice, alternatively, defendants has shown a reckless and outrageous indifference to a highly unreasonable risk of harm to plaintiff.

47. Plaintiff was injured by defendants material false representations and conspiratorial scheme to foreclose on plaintiff's home by plaintiff having acted on the material false representation and thereafter sought bankruptcy proceedings, causing plaintiff bad credit ratings, emotional and mental distress and causing plaintiff having to reimburse lessee of plaintiff's home, which had been leased for eighteen (18) months on January 1, 2008, upon the lessee learning that foreclosure was impeding April 14, 2008, causing the lessee to withdraw from the lease July 1, 2008, thereby causing plaintiff having to reimburse the lessee the remaining twelve (12) months on the lease in the amount of 12,600.00.

RELEIF

48. Plaintiff seeks actual damages pursuant to 18 U.S.C. Sec 1964(c) in the amount of 37,800, against each defendant.

49. Plaintiff seeks punitive damages pursuant to 11 U.S.C. Sec. 362k(1) in the

1 amount of 750,000.00 from each defendant for malicious violation of
2 11U.S.C. Sec 362(a) and (h).

3 50. Plaintiff seeks economical damages in the amount of 12,600.00 from
4 defendants for actual damages for fraud under state law.

5 51. Plaintiff seeks non economical damages in the amount of 2,000,000.00 for
6 emotional and mental distress from each defendant for violation of fraud under
7 state law.

8 52. Plaintiff seeks punitive damages in the amount of 3,000,000.00 from each
9 defendant for violation of fraud under state law.

10 53. Costs for the litigation of this proceeding.

11 54. Plaintiff has suffered damages to his credit rating in an amount to be
12 determined at trial.

13 VERIFICATION

14 STATE OF OREGON)

15) SS

16 MARION COUNTY)

17 COMES NOW Affiant Tyrone Blocker, being first duly sworn upon oath deposes and
says the following is true upon affiant's personal knowledge and belief:

18 The facts contained in paragraphs eight (8) through forty seven (47) are true and
19 correct.

20 Sworn and Subscribed before me this 1 day of April, 2010.

Tyrone Blocker
Signature of Affiant

Shawn Jenne
Signature of Notary State of Oregon

06/03/12
My Commission Expires



1

2 **CERTIFICATION OF SERVICE**

3

4 **COMES NOW** Plaintiff, Tyrone Blocker, and certify that a true and correct copy of the
5 First Amended Complaint has been served upon Attorney for Defendants, HSBC Bank
6 USA/Ocwen Loan Servicing / James N Esterkin at 210 SW Morrison, Suite 600 Portland, OR
7 97204, this 1 day of April, 2010, by placing a true copy in an envelope
8 addressed above and giving it to the Law Library Coordinator, S. Jenne at the Santiam
9 Correctional Institution for mailing

10

11

12



Tyrone Blocker
SID # 5913205
4005 Aumsville Hwy SE
Salem, Or. 97317-9112

13

14

15

16

17

18

19

20

21

22

23

24